

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rule I concerning social card games)	ON PROPOSED ADOPTION
played for prizes of minimal value,)	AND AMENDMENT
New Rule II concerning location)	
managers, and the amendment of)	
ARM 23.16.101, 23.16.116,)	
23.16.117, 23.16.502, 23.16.508,)	
23.16.1101, 23.16.1102, and)	
23.16.1903 concerning definitions,)	
transfer of interest among licensees,)	
transfer of interest to new owners,)	
application for operator license,)	
change in managers, officers, and)	
directors, card game tournaments,)	
large-stakes card game tournaments,)	
and video gambling machine ticket)	
vouchers)	

TO: All Concerned Persons

1. On Thursday, November 17, 2016, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on November 10, 2016, to advise it of the nature of the accommodation that you need. Please contact Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I SOCIAL CARD GAMES PLAYED SOLELY FOR PRIZES OF MINIMAL VALUE (1) Except for the card games of panguingue and poker and their approved variations, an authorized card game as provided for in 23-5-311, MCA, which is played solely for prizes of minimal value, is considered a social card game and is not a gambling activity.

(2) For purposes of this rule, prizes of minimal value means:

(a) an award to an individual card game winner of cash and/or merchandise which does not exceed \$5 in total value; or

(b) an award to the winner or winners of a social card game tournament in cash and/or merchandise which does not exceed \$50 in total value per individual tournament prize.

(3) Every poker or panguingue game or tournament, and every other authorized card game or card game tournament which is played for an award or prize greater than minimal value, is a gambling activity which must comply with the requirements of Title 23, chapter 5, MCA, and the rules of the department.

AUTH: 23-5-115, 23-5-306, MCA

IMP: 23-5-115, 23-5-306, MCA

NEW RULE II LOCATION MANAGERS (1) A gambling operator shall designate at least one location manager, which designation shall initially be made on the license application. A licensed owner who does not personally provide onsite management of the premises shall designate a location manager to perform such services. A location manager authorized by the licensee to provide general oversight of the gambling operation must be approved by the department.

(2) Except as provided in (3), within 30 days of a location manager commencing duties, the licensee shall submit to the department a completed location manager application (Form 30A), and for nonowners, the licensee shall also submit:

(a) a completed personal history statement (Form 10) for each location manager;

(b) two complete sets of fingerprint cards for each location manager; and

(c) fingerprint processing fees.

(3) So long as at least one approved location manager continues to serve as a location manager, the removal of any location manager or the addition of an owner as a location manager, shall be reported to the department no later than June 30 of the current fiscal year on a location manager application (Form 30A) or on the annual license renewal form.

(4) When a management company is contracted to manage a licensed location, at least one onsite manager must be approved as a location manager. The ownership, officers and directors of the management company and the onsite manager(s) employed by the management company must be reported to the department within 30 days of the contract effective date. To seek approval of a management company contracted to manage a licensed location, the licensee shall submit to the department:

(a) a completed location manager application (Form 30A); and

(b) for each owner, officer, director, and onsite manager of the management company:

(i) a complete personal history statement (Form 10);

(ii) two complete sets of fingerprint cards; and

(iii) fingerprint processing fees.

(5) Location manager and management company approval shall be based on the standards of suitability established in 23-5-176, MCA.

(6) Whenever a location manager or management company has been contracted by the licensee to manage a licensed location, the licensee shall:

- (a) retain ultimate control over the license and premises;
 - (b) maintain active participation in the gambling operation sufficient to ensure the proper and lawful conduct of the business; and
 - (c) provide the location manager compensation in an amount that is commensurate with the duties performed. Location manager compensation may not be based on a percentage of gross sales or net profits.
- (7) Failure to abide by the provisions of this rule may subject the licensee to administrative action, including revocation of the license.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, MCA

4. The rules as proposed to be amended provide as follows, new material underlined and deleted material interlined:

23.16.101 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) remains the same.

(2) "Active investor" means a beneficial owner as defined by the U.S. Securities and Exchange Commission (SEC) which includes an individual or group of individuals who directly or indirectly own 5% or more of a publicly traded corporation and directly or indirectly share voting power or investment power, including anyone who would be required to file a Schedule 13D with the SEC.

(2) through (9) remain the same but are renumbered (3) through (10).

~~(10) "Management agreement" means a contract between the licensee and manager(s). The agreement may not transfer an ownership interest in the licensed operation or limit or relieve the licensee of record from the responsibilities of ownership. Bonuses or bonus-type payments based on job performance are not considered ownership interests if they are provided in conjunction with a reasonable salary base and do not assign or transfer an ownership interest.~~

(11) "Manager" "Location manager" means a person employed or authorized designated by the licensee to supervise personnel or business functions of the licensed operation provide general oversight and ensure compliance with gambling laws and regulations under the authority and general guidance of the owner. A location manager may be a licensed owner, general manager, or onsite manager.

(12) through (15) remain the same.

(16) "Passive investor" means a beneficial owner as defined by the U.S. Securities and Exchange Commission (SEC) which includes an individual or group of individuals who directly or indirectly own at least 5% but less than 20% of the shares of a publicly traded corporation, who have not acquired and who do not hold the securities for the purpose of, or with the effect of, changing or influencing the control of the issuer of the securities and who would be allowed to file with the SEC a Schedule 13G in lieu of Schedule 13D.

(16) through (20) remain the same but are renumbered (17) through (21).

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-112, 23-5-115, 23-5-118, 23-5-176, 23-5-629, 23-5-637, MCA

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES (1) Except as provided in (9) and (10), an ownership interest may not be transferred among existing owners without submitting an amended gambling license application to the department and obtaining department approval prior to the transfer.

(2) through (8) remain the same.

(9) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a licensed gambling operation; or

(b) transfer ~~of that results in~~ less than 5% ownership interest in a publicly traded corporation. ~~Transfers of an interest of 5% or more in a publicly traded corporation are subject to the provisions of this rule, except that the transfer may occur without prior department approval. The department reserves the right to act under 23-5-136, MCA, in this situation if it determines that the transfer violates Montana gambling law or the rules in this chapter.~~

(10) Transfers of an ownership interest that result in 5% or greater ownership in a publicly traded corporation shall be subject to the provisions of ARM 23.16.117. The department reserves the right to act under 23-5-136, MCA, in this situation if it determines that the transfer violates Montana gambling law or the rules in this chapter.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) Except as provided in (7), (8), ~~and (9)~~, and (10), an ownership interest may not be transferred to a new owner until a new gambling license application reflecting the proposed transfer is submitted to the department and the department approves the transfer.

(2) through (6) remain the same.

(7) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a licensed gambling operation; or

(b) transfer that results in ~~of~~ less than 5% ownership interest in a publicly traded corporation. ~~Transfers that result in of an ownership interest of 5% or more greater in a publicly traded corporation are subject to the provisions of this rule in (10), except that the transfer may occur without prior department approval whenever the transfer does not occur as the result of a corporate merger or reorganization. The department reserves the right to act under 23-5-136, MCA, in this situation if it determines that the transfer violates Montana gambling law or the rules in this chapter.~~

(8) through (9) remain the same.

(10) Transfers that result in 5% or greater ownership interest in a licensed gambling operation held by a publicly traded corporation may occur prior to approval under the following conditions:

(a) Whenever a change in ownership results in 10% or greater ownership interest by an active investor, or 20% or greater ownership interest by a passive investor, the licensee shall, within 60 days from the date of change in ownership interest, file with the department a complete Form 40 license application form. The Form 40 shall be submitted together with all required documents and fees.

(b) Whenever a change in ownership results in an ownership interest by an active investor that is 5% or greater, but less than 10%, the licensee shall, within 30 days from the date of change in ownership interest, file with the department a complete Form 43 notification form, including all required documents.

(c) Whenever a change in ownership results in a an ownership interest by a passive investor that is 5% or greater, but less than 20%, the licensee shall, within 60 days from the date of change in ownership interest, file with the department a complete Form 43 notification form, including all required documents.

(11) Department approval is required prior to any change in ownership in a licensed gambling operation held by a publicly traded corporation which occurs as the result of a corporate merger or reorganization.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on Forms 5, 10, 40, or 43, and FD-258, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the ~~department's division's~~ web site www.dojmt.gov/gaming www.doj.mt.gov/gaming:

(a) through (e)(v) remain the same.

(vi) if the applicant is a nonprofit corporation or association, the information must be submitted for officers, directors, and on the person person(s) responsible for conducting the gambling activity (e.g., location manager, gambling manager, steering committee); or

(vii) if the owner(s) acquires the services of a gaming gambling manager or management firm, the information must ~~not only~~ be submitted on for the owner and but the manager or management firm ~~as well~~; and

(f) the full name and address of every location manager ~~employed by the applicant in a gambling-related activity in Montana.~~

(2) remains the same.

AUTH: 23-5-112, 23-5-115 MCA

IMP: 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

23.16.508 CHANGES IN LOCATION MANAGERS, OFFICERS, AND DIRECTORS (1) Except as provided in [NEW RULE II], Any any change in ~~management employees~~ location managers, officers, or directors ~~listed on a licensee's gambling license application~~ must be reported to the department within 30 days of the date of change.

(2) ~~New management employees~~ location managers, officers, and directors shall submit a personal history statement and a complete set of fingerprints (Forms 10 and FD-258). ~~A written management agreement must also be submitted for each new management employee.~~

(3) A license is subject to revocation if the changes in ~~management employees~~ location managers, officers, or directors result in the licensee's failure to meet the statutory qualifications for licensure.

AUTH: 23-5-112, 23-5-115, 23-5-176, MCA

IMP: 16-4-414, 23-5-176, 23-5-177, MCA

23.16.1101 CARD GAME TOURNAMENTS – POKER TOURNAMENT DIRECTORS ASSOCIATION RULES (1) Card game tournaments which involve consideration ~~in order~~ to play and the chance of winning something of value are gambling activities. Publicly played card game tournaments involving gambling activity are limited to the authorized card games ~~known as panguingue and poker, as described by ARM 23.16.1202~~ provided for in 23-5-311, MCA.

(2) and (3) remain the same.

(4) Every card game tournament involving poker or panguingue must be conducted by a licensed dealer as required in 23-5-309, MCA. ~~In addition, a designated person, who may be one of the licensed dealers, must be present on the premises at all times during the tournament to oversee the conduct of the games and settle disputes.~~

(5) In every tournament, a designated person, who may be one of the licensed dealers, must be present on the premises at all times during the tournament to oversee the conduct of the games and settle disputes.

(5) through (8) remain the same but are renumbered (6) through (9).

AUTH: 23-5-115, 23-5-313, MCA

IMP: 23-5-306, 23-5-307, 23-5-308, 23-5-317, MCA

23.16.1102 LARGE-STAKES CARD GAME TOURNAMENTS (1) remains the same.

(2) A licensed operator who has been issued a large-stakes card game tournament permit may conduct no more than 16 large-stakes ~~poker~~ tournaments during the permit year.

(3) through (8) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-317, MCA

23.16.1903 EXPIRATION DATE FOR VIDEO GAMBLING MACHINE TICKET VOUCHERS – EXPIRATION DATE – PAYMENT IN FULL UPON DEMAND – EXCEPTIONS (1) ~~Except as provided in (2), location~~ Gambling operators must immediately pay all valid ticket vouchers in full and in cash upon presentation of the ticket for payment.

(2) A ~~video gambling machine~~ ticket voucher that is printed more than 48 hours before it has been presented for payment may, at the discretion of the ~~location~~ gambling operator, be deemed invalid and not payable, only if there has been notice to the player of the expiration period by the presence of a sign that is not less than 24 inches by 36 inches displayed in a licensed premises at the time of play, in plain view of the gambling public, which reads "Promptly Redeem Your Win Tickets -- Tickets Void After 48 hours;" and;

(a) for machines and programs approved prior to adoption of this rule, the face of the ~~video gambling machine~~ ticket voucher paper has been preprinted with the expiration notice required by ARM 23.16.1901; or

(b) for machines and programs approved after adoption of this rule, the expiration notice is printed on the face of the ~~video gambling machine~~ ticket voucher as required by ARM 23.16.1901.

(3) A gambling operator who has a good faith reason to believe a ticket voucher resulted from a machine malfunction may refuse payment of the ticket voucher, pending the department's finding in (4), provided the gambling operator immediately:

(a) prints an audit ticket from the machine;

(b) suspends play of the VGM;

(c) contacts and consults with the machine owner if the gambling operator is not also the machine owner.

(i) After consulting with the machine owner, the gambling operator who no longer believes the ticket voucher resulted from a machine malfunction shall immediately pay the ticket voucher as provided in (1).

(ii) After consulting with the machine owner, the gambling operator who continues to believe the ticket voucher resulted from a machine malfunction shall promptly submit a completed Form 50 to the department, together with all required documents.

(4) Upon receipt of the completed Form 50, together with all required documents, the department shall inspect and evaluate the suspended video gambling machine or its subparts, and determine whether the ticket voucher resulted from a machine malfunction. The department shall notify the player, the machine owner, and the gambling operator of its determination.

(a) If the department determines the ticket voucher did not result from a machine malfunction, the gambling operator shall immediately pay the ticket voucher, and the VGM may be returned to active play.

(b) If the department determines that a machine malfunction occurred, the ticket voucher is invalid, and the VGM must be removed from play.

AUTH: 23-5-115, 23-5-608, MCA

IMP: 23-5-608, MCA

REASON:

The department proposed adoption of New Rule I because in 2015 the Legislature enacted HB 38 (amending in part 23-5-306, MCA), which authorized the department to define prizes of minimal value for the live play of social cards, which includes any authorized card game other than poker and panguingue. Prior to HB 38, the definition of prizes of minimal value had cross referenced the term in a federal law which was unquantified.

In determining these minimal prize values, the department first interpreted the general definition of the word "minimal," as meaning a minimum or negligible amount. The department then evaluated the range of small bets typically seen in

friendly card games that are not poker or panguingue, contrasted these values with the maximum value of other gambling prize limits, and attempted to assess the risk posed by prizes of greater value which could be awarded in an unregulated live game. The proposed rule also reflects the department's consideration that prizes of minimal value should vary depending on whether the prize award is for a single social card game, or part of a social card game tournament.

The proposed amendments to ARM 23.16.1101 and 23.16.1102 are designed to correct an erroneous restriction on tournament play of live card games to only poker and panguingue. In addition to a minor change to the structure of the rule for ease of reading, the proposed amendment of these rules serves to correct that error and clarify to the public that tournament play may include any of the authorized live card games, not merely poker and panguingue.

The department's proposed amendments to ARM 23.16.101, 23.16.116, and 23.16.117 serve to improve and clarify the application process and the required document submissions for publicly traded corporations. Publicly traded corporations are unique under the gambling laws because owner interests of less than 5% do not need to be disclosed. Publicly traded corporations add complexity to the application process due to the fluid nature of the ownership which is purchased through a stock exchange, and this feature needs to be addressed in administrative rule.

The current administrative rules, while providing some guidance, have left many questions unanswered regarding the application process for publicly traded corporations, which has typically required administrator review to determine when applications are required, what documents must be submitted, and who needs to be disclosed. These proposed amendments clarify when applications are necessary based on the shareholder's ability to control or influence corporate activities, and when disclosure of individuals is required based on who is involved in decision-making.

The department proposes amending ARM 23.16.101, 23.16.502, and 23.16.508, and adding New Rule II to streamline the approval process for managers, clarify which employees of a licensed gambling operation require department approval, and eliminate the requirement for a licensee to submit a management agreement to the department. The proposed amendments identify a new form and the documents which are required to seek department approval of the person filling the management role. The proposed amendments also reinforce the requirement that licensees may not surrender the ownership responsibilities to a manager. Finally, the proposed amendments specify the timeframes for identifying the addition, deletion, or change in location managers.

The proposed amendment to ARM 23.16.1903 defines a procedure by which gambling operators may declare a ticket voucher invalid due to a machine malfunction. The procedures will serve to protect players and gambling operators when a malfunction is suspected, timely preserve information needed for a proper

evaluation by the department, and document the existence or absence of an asserted machine malfunction.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than 5:00 p.m., November 25, 2016.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

7. Cregg W. Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

8. An electronic copy of this proposal notice is available through the department's web site at <https://dojmt.gov/agoffice/administrative-rules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirement of 2-4-302, MCA, does apply to the rule adoption and amendments related to social card games for prizes of minimal value, and has been fulfilled. The primary bill sponsor of HB 38, was contacted on May 13, 2016 at the Gaming Advisory Council meeting and on June 6, 2016 by e-mail.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ J. Stuart Segrest
J. Stuart Segrest
Rule Reviewer

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General
Department of Justice

Certified to the Secretary of State October 17, 2016.